



# **MINUTES**

**Monday, August 5, 2013**

**FORT MYERS BEACH TOWN COUNCIL  
TOWN HALL – COUNCIL CHAMBERS  
2523 ESTERO BOULEVARD  
FORT MYERS BEACH, FLORIDA 33931**

## **I. CALL TO ORDER**

Mayor Mandel called to order the August 5, 2013 Regular Meeting of the Town Council at 9:00 a.m. Present along with Mayor Mandel: Vice Mayor Kosinski and Council Members Andre, List, and Also Present: Town Manager Stewart, Town Attorney Miller, Finance Director Wicks, Public Works Director Lewis, Community Development Director Fluegel, and Town Clerk Mayher.

## **II. INVOCATION – Rev. Jeanne Davis, Beach United Methodist Church**

## **III. PLEDGE OF ALLEGIANCE**

## **IV. APPROVAL OF FINAL AGENDA**

Mayor Mandel requested to move the Proclamation, Item IX – Industry Appreciation Week, to the Consent Agenda since there was no representative present to accept it.

Consensus approved the Agenda as amended.

## **V. PUBLIC COMMENT**

Mayor Mandel noted Public Comment was a time for the public to discuss Consent Agenda Items and issues currently not on the agenda.

Public Comment opened.

No speakers.

Public Comment closed.

## **VI. IMAGE OF FORT MYERS BEACH**

Council Member List reported the Beach Elementary School achieved an 'A' rating this year in the school rating system.

Council Member Andre noted the Town's very successful Fourth of July celebration with a great parade and fireworks.

Vice Mayor Kosinski reported the 3rd Annual Keep the Spirit of '45 Alive event would be held on August 11, 2013.

Mayor Mandel offered kudos for the Town's Fourth of July celebration and reported the Town received a thank you note from Senator Benaquisto for inviting her to participate in the parade.

## **VII. LOCAL ACHIEVEMENTS AND RECOGNITIONS**

None.

## **VIII. ADVISORY COMMITTEES ITEMS AND REPORTS**

### **A. Public Safety Committee Banner**

Town Manager Stewart noted the Public Safety Committee proposed new banners to replace the banners currently hanging on Estero Boulevard.

Discussion was held concerning the proposed redesigned banners and the location of the banners.

Bruce Butcher, Public Safety Committee, reviewed the Committee's work to develop a banner with a simple message that could be easily seen; and ways to help raise awareness of safety for pedestrians and drivers on Fort Myers Beach.

Discussion continued concerning the proposed redesigned banners and the location of the banners.

**MOTION:** Council Member Andre moved to approve the recommendation from the Public Safety Committee for new Safety Banners with the "Yield" to images [bike and pedestrian] for incoming visibility entering the Island, and the "Be Seen on FMB" in the middle; second by Council Member List.

**VOTE:** Motion approved, 5-0.

## **IX. PROCLAMATION**

Item moved to Consent Agenda.

### **Industry Appreciation Week**

## **X. APPROVAL OF MINUTES**

- A. May 16, 2013 Joint TC/CELCAB Session
- B. June 3, 2013 Town Council Session
- C. June 3, 2013 Work Session
- D. June 7, 2013 Work Session
- E. June 17, 2013 Town Council
- F. June 17, Work Session

**MOTION:** Council Member List moved to approve all the minutes as presented with the correction of the June 17, 2013 Town Council Work Session Minutes' adjournment changed from 9:18 a.m. to 10:18 a.m.; second by Vice Mayor Kosinski.

**VOTE:** Motion approved, 5-0.

## **XI. CONSENT AGENDA**

- A. Approval of Joint Agreement with Lee County for Community Development Block Grant  
A request to authorize the Town of Fort Myers Beach to agree, by joint resolution with Lee County, to participate in the Community Development Block Grant (CDBG) Program for federal fiscal year 2014, 2015, and 2016.
- B. Acceptance of Charlotte Harbor NEP Bivalve Data Collection Grant  
Request a motion to approve the Bivalve Data Collection Grant from Charlotte Harbor National Estuary Program in the amount of \$200.
- C. Industry Appreciation Week Proclamation (Moved from Item IX to Consent Agenda)

**MOTION:** Vice Mayor Kosinski moved to approve the Consent Agenda; second by Council Member List.

**VOTE:** Motion approved, 5-0.

## **XII. PUBLIC HEARING**

Mayor Mandel opened the Public Hearing at 9:12 a.m.

- A. First and Only Public Hearing Ordinance 13-05, Non-Residential Mandatory Recycling

Town Clerk Mayher read the title of Ordinance 13-05:

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, ESTABLISHING ARTICLE IV IN CHAPTER 20 OF THE TOWN OF FORT MYERS BEACH CODE OF ORDINANCES, TO BE ENTITLED "MANDATORY RECYCLING FOR COMMERCIAL ESTABLISHMENTS;" CREATING SECTION 20-60, "DEFINITIONS;" SECTION 20-61

“RECYCLING MANDATORY FOR COMMERCIAL ESTABLISHMENTS;” SECTION 20-62, “PROOF OF PARTICIPATION IN RECYCLING PROGRAM;” AND SECTION 20-63 “PENALTIES;” PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

Town Manager Stewart noted the proposed ordinance had been introduced prior to Council’s hiatus, and reported he received no feedback regarding the proposed ordinance from the business community. He pointed out that the effective date on the proposed ordinance was blank, and recommended November 1, 2013 as the effective date which would give the Town time to inform the businesses and allow the businesses to deplete any stock they may not be able to use in the future.

Council Member List reported a business owner contacted her to inform her they were already recycling and had a contract; therefore, they were already in compliance.

Town Attorney Miller acknowledged in the affirmative; and pointed out that only one commodity had to be recycled [main volume item for the business].

Council Member Andre questioned if a system had been created for Times Square.

Town Manager Stewart reported the Town was working with Advanced Disposal to determine a more efficient methodology; however, it had not been finalized.

Mayor Mandel asked if there was an LPA representative or a member of any other Town committee for comment.

No speakers.

Public Comment opened.

No speakers.

Public Comment closed.

Mayor Mandel concurred that the proposed effective date of November 1, 2013 was appropriate.

**MOTION:** Vice Mayor Kosinski moved to adopt Ordinance 13-05, Mandatory Recycling for Commercial Establishments, and set an effective date for November 1, 2013; second by Council Member Andre.

**VOTE:** Motion approved by roll call vote, 5-0.

### **XIII. ADMINISTRATIVE AGENDA**

#### **A. Tax Exempt, Public Utilities Refunding Note, Series 2013**

Town Manager Stewart reviewed that the two proposed resolutions [13-12 and 13-13] would authorize refinancing of the outstanding water utility debt and authorize issuance of Revenue Refunding Note, Series 2013.

Finance Director Wicks reported that the Town obtained great rates from SunTrust. She introduced Richard Harb from Nabors, Giblin & Nickerson.

Richard Harb, Attorney – Nabors, Giblin & Nickerson (Bond Counsel), explained the first resolution was an amended and restated master resolution which was necessary since the Town's Public Works Service Corporation was dissolved in 2011, and that the Town was now responsible for obligations and liabilities; and to note that since the bond validation occurred in 2011 it needed to be indicated that the Series 2011 bonds were never issued. He added the second resolution was a supplemental resolution that contained provisions, reporting requirements, and covenants necessary for the refunding of the Series 2010 note.

Town Manager Stewart pointed out that the documents allowed the Town to refund the note without penalty.

Town Attorney Miller added that the documents allowed the Town to refund the note without penalty after the first year.

Discussion ensued regarding interest rates.

Attorney Harb reported the interest rates had been locked in at 1.81%.

Finance Director Wicks added that the Town did a '30-day lock' to insure the best rates which came in at 1.81% at a fixed rate for the life of the loan.

Town Manager Stewart explained that this was the original purchase debt for the potable water sewer system for the Town and that it was being refinanced at a longer term and a lower interest rate.

Public Comment opened.

No speakers.

Public Comment closed.

Town Attorney Miller noted both resolutions could be approved in one motion.

**MOTION:** Vice Mayor Kosinski moved to approve Resolution Nos. 13-12 and 13-13 [supplemental resolution] refinancing the Revenue Refunding Note, Series 2007 and authorize Revenue Refunding Note, Series 2013 at an interest rate of 1.81%; second by Council Member Andre.

**VOTE:** Motion approved, 5-0.

**B. Seafarer's Development Rights**

Request Lee County to transfer ownership of development rights for Seafarers and Crescent Beach Family Park.

Town Manager Stewart reviewed how Lee County had purchased the Seafarer's site with the assistance of Tourist Development Council (TDC) funds; how the Town had indicated to a Lee County Commissioner their desire to acquire the development rights; examples of development rights; and the reasons why the Town wanted to have the development rights transferred to the Town for Crescent Beach Family Park. He reported he spoke with the new County Manager about the matter who requested a letter from the Town which specifically requested the transfer of the development rights. He requested approval to authorize him to send the County Manager the letter as requested. He pointed out that if transferred to the Town, the development rights would remain with the Town to be enacted by Council action [not the Town Manager or Town staff].

Discussion ensued regarding development rights for Seafarer's.

Town Manager Stewart clarified that the request would be for the development rights for Crescent Beach Family Park. He discussed how density/development rights could be utilized.

Town Attorney Miller reviewed the Code as it related to development rights (Section 34-632.6, Density Transfers).

Discussion ensued concerning the issue of 'proximity' as it related to density transfers as noted in the current Land Development Regulations; and the proposed request to send a letter to the County requesting the development rights for the Crescent Beach Family Park.

Vice Mayor Kosinski stated he would like to have the issue of 'development rights' placed on a Work Session agenda.

Public Comment opened.

No speakers.

Public Comment closed.

**MOTION:** Vice Mayor Kosinski moved to request Lee County to transfer ownership of development rights for Crescent Beach Family Park; second by Council Member List.

**VOTE:** Motion approved, 5-0.

**XIV. PUBLIC COMMENT**

Public Comment opened.

John Pohland, resident, commented that the Public Safety Committee banners needed to reinforce that all motorists must 'stop' (not use the work 'yield') for pedestrians in order to be effective.

Public Comment closed

## **XV. TOWN MANAGER ITEMS**

### **A. Mound House Update**

Town Manager Stewart reported the kayak building was coming along quite well; the roof and wall structures were in the process of being done; a contractor was obtained to correct problems with the pathways; and value engineering and some modifications were done for the pier/observation deck and the matter would come before Council. He offered an update on the underground exhibit (coordination of lights with the video). He noted the Gumbo Limbo tree on the site was removed and staff was working to obtain a replacement tree, and that most of replacement cost should be covered by the maintenance agreement with the TDC.

Council Member Andre noted the kayak shed went from 30 amps to 60 amps.

Town Manager Stewart stated the increase in amps was for the golf cart.

### **B. Estero Boulevard Discussion**

Town Manager Stewart pointed out the survey results and other information from the Estero Boulevard public meeting had been included in the agenda packet.

Public Works Director Lewis noted the comments and the summary of the comments from the County's consultant were on the disk given to Council. She added that the County's design team needed to receive input and direction from Town Council for the core area and the hi-rise section. She reported staff was hoping to schedule a joint meeting with Town Council and the County's design team.

Town Manager Stewart requested the joint meeting be held soon.

Mayor Mandel requested the item be placed on Agenda Management. He recognized Rob Phelan, Lee County DOT.

Rob Phelan, Lee County DOT, requested Town Council input and direction regarding the core area and hi-rise section of Estero Boulevard which had generated many comments at the public meeting. He hoped to schedule a work session in the near future.

## **XVI. TOWN ATTORNEY ITEMS**

Mayor Mandel reported he had received some information and subsequently had conversations with the Town Manager and Town Attorney concerning Mound Key.

Town Attorney Miller explained there was an opportunity, if the Council wanted to proceed, to annex Mound Key. She noted that normally there were residents in an area that would consider the matter in a referendum for annexation; however, the subject site had no human residents. She added that she might be able to find an existing opinion on the matter, or she might have to obtain an Attorney General opinion. She noted that Mound Key was included in the efforts of the group wanting to incorporate Estero.

Town Manager Stewart stated that after discussing the matter with Mayor Mandel he had Town staff gather facts about the subject property:

- There were 10 parcels on the site, nine of which were owned by the State of Florida, and one parcel owned by a private individual who lived on Fort Myers Beach.
- There was a historical connection between Fort Myers Beach and Mound Key.
- The distance between Town boundaries and Mound Key were closer to Fort Myers Beach than the area requesting incorporation.
- There were some other geographical areas in the back-bay (owned by the State) between the Town and Mound Key. (He reviewed the Town's boundaries, Mound Key, and other sites on the map displayed on the wall in Council Chambers.)

Mayor Mandel reported he had a conversation with the one Mound Key private property owner who noted his preference to be annexed by Fort Myers Beach.

Discussion was held regarding the purpose, feasibility, and any potential benefits and responsibilities of annexing Mound Key by the Town; the requirement of an annexation analysis (includes a cost benefit analysis); the potential for Mound Key to be incorporated by another group; and the cultural connection of Mound Key to the Town's Mound House.

Mayor Mandel questioned what would the potential cost be to annex Mound Key.

Town Attorney Miller pointed out that there would be a cost for an internal study.

Town Manager Stewart recommended that the Council request the Town Attorney provide them with a legal analysis about what can and cannot be done with the matter.

Council Member Raymond questioned that since the State owned 90% of the property would the State be required to approve an annexation.

Town Attorney Miller reported the State would have to approve annexation.

Council Member List noted she would like to have information about what would be the benefit of annexation to the Town included in the legal analysis.

Discussion continued regarding the purpose, feasibility, and any potential benefits and responsibilities of annexing Mound Key by the Town.



Consensus approved to request the Town Attorney prepare a legal analysis on the feasibility of annexing Mound Key.

**Recessed at 10:05 a.m. – Reconvened at 10:35 a.m.**

## **XVII. COUNCILMEMBER ITEMS AND REPORTS**

Council Member List – reported a street fair was planned for November 17, 2013 near Bay Oaks; and that the Beach Elementary School would be celebrating their anniversary by burying a time capsule. She questioned the progress of installing ‘no parking, standing, delivery, etc.’ signs on Primo Drive as it related to the Beached Whale. She noted receipt of a letter from an attorney on behalf of a taxi company and asked the matter be placed on a Work Session agenda.

Town Manager Stewart acknowledged he too received the letter from an attorney on behalf of a taxi company.

Discussion ensued regarding parking taxi(s) at a residence which was a Code Enforcement issue.

Town Clerk Mayher reported that shortly after Council’s recess this morning she was approached by a man who stated that he and his attorney were seeking to place an item on a Council agenda on the taxi matter. She added that she advised the man to speak to a Council Member in order to have an issue placed on a Council agenda.

Council Member Andre – discussed the Biggert-Waters National Flood Insurance Reform Act of 2012 and the potential impact it would have on Fort Myers Beach property values. He recognized Mr. Christopher Heidrick.

Christopher Heidrick of Heidrick & Co. Insurance & Risk Management Services discussed:

- Background of the National Flood Insurance Program (NFIP) and its reauthorization by Congress every five years
- The series of short-term extensions since after Hurricane Katrina
- The Biggert-Waters National Flood Insurance Reform Act of 2012 (BW12); Section 205 – Pre-Firm Rates and future flood insurance rate increases; Section 207 – Eliminates grandfathering, rate increases at the time of the next flood map revision
- Lee County was the third most heavily impacted County in the United States
- Impacts on individual residences – premium increases for ground level/pre-firm structure purchased on or after 10/1/13, purchased between 7/6/13 and 10/1/13
- Residents with ambulatory challenges would need to choose between affordability and accessibility
- Increased costs to be passed along to residential and commercial tenants
- Significant decrease in the tax base as the cost of flood insurance would be prohibitive and eliminate buyers who require a mortgage
- Ground level commercial space may become unaffordable, leading to high vacancy rates and lower property values
- Significant amounts of uninsured property may lead to slower re-build/recovery after a storm

- Requests for the affordability to be completed as it related to BW12

He encouraged the Town Council to inform their US Delegation (Representative Radel, Senators Rubio and Nelson) of the impact of BW12 to Fort Myers Beach.

Discussion ensued concerning potential flood insurance premium increases for non-primary residences; grandfathering property; and coverage prior to a flood map change.

Mr. Heidrick reiterated that the Town Council should inform their US Delegation (Representative Radel, Senators Rubio and Nelson) of the impact of BW12 to Fort Myers Beach.

Discussion continued regarding Biggert-Waters National Flood Insurance Reform Act of 2012 (BW12); and statistics of impacted properties and Florida's premiums paid to the NFIP versus losses.

Town Attorney Miller offered to draft a resolution to adopt and forward to the Town's US Delegation (Representative Radel, Senators Rubio and Nelson).

Town Manager Stewart concurred that a letter be forwarded to the US Delegation, and that the Town should work with other communities on this matter. He noted that the Town did have a staff member, who was designated as the Floodplain Manager, and that the Town had been working on a program to get the Town's insurance rate lowered, and the next review would be in September. He discussed the Town's current rating of 7, and their work to get the rate lowered. He added that staff would prepare a resolution for Council's approval which would be forwarded to the elected officials.

Council Member Andre recounted his personal information regarding flood insurance premiums, and explained how a similar situation would impact other people that might not be able to afford to remain in their home.

Discussion ensued concerning the potential negative economic impacts from the Biggert-Waters National Flood Insurance Reform Act of 2012 (BW12); and the possibility and/or ability to raise residential and building elevations.

Town Manager Stewart stated he would also bring this matter to the attention of the Florida League of Cities.

Mayor Mandel noted he was the Council's representative to the Florida League of Cities and would make them aware of the issue.

Council Member Raymond – no report or items.

Vice Mayor Kosinski – no report or items.

Mayor Mandel – noted the memo Council received from staff regarding Walmart's plan to open a store on San Carlos Boulevard; and indicated his concern about traffic in the area of the proposed store. He asked if staff intended to attend the meeting about Walmart this coming Friday.

Community Development Director Fluegel report staff would attend the meeting to monitor the issue but would not go on the record unless directed.

Mayor Mandel noted that if comments were not made at the Friday meeting, then the Town could not speak on the issue before the County Commissioners.

Town Manager Stewart concurred and pointed out that discussion at Friday's meeting must be to specific issues.

Mayor Mandel reviewed his concerns on issues which he believed should be discussed before the County Commission:

- Page 3, traffic, especially during 'season'; and Page 1, traffic study was done December 11-12, and many seasonal visitors who start to come to Fort Myers Beach in October do go north for the holidays and return after 1/1; and he suggested a traffic study be completed in February or March.

Town Manager Stewart pointed out that the traffic study was done according to what the site was originally approved for which falls within a general usage category.

Mayor Mandel continued to review his concerns on issues which he believed should be discussed before the County Commission:

- Beach trolley ridership and the loss of a transfer point on the subject property; and clarification of the ridership numbers for the trolley.

He pointed out that there also has been no mention of the traffic impact of the Ebb Tide Project. He urged Council to request staff attend the meeting on Friday to make these points so that the Town would reserve the option to speak before the BOCC.

Discussion was held regarding traffic concerns associated with Walmart and the Ebb Tide Project, and the need for staff to attend the Walmart meeting on Friday.

Consensus was to request Community Development Director Fluegel and Planning Coordinator Overmyer attend the Walmart meeting on Friday and for them to communicate the concerns of the Town Council as noted.

Mayor Mandel reported there was an MPO Meeting held during the Council's hiatus, and it appeared the MPO and the State DOT wanted to have a stakeholders meeting in September to discuss San Carlos Boulevard traffic. He added that the MPO was studying a recommendation that would go to the County Commission that would make a proposal to change funding sources for roads. He requested to pursue information received from the National League of Cities regarding prescription drug discount cards for residents at no cost for residents that might not have health insurance. He acknowledged receipt of a letter from the Applied Physics Laboratory from Florida Gulf Coast University which dealt with outdoor lighting and the control of outdoor lighting.

Town Manager Stewart reported he received the same letter from FGCU and forwarded it to the Public Works Director who was reviewing the matter.

Mayor Mandel noted a change had been issued for the county-wide application for the Florida Department of Law Enforcement JAG, and forwarded the information to the Town Manager. He requested approval to prepare a proclamation for the Spirit of '45.

Consensus approved the preparation of a proclamation for the Spirit of '45.

## **XVII. AGENDA MANAGEMENT**

Mayor Mandel noted two requests for items to be added to Agenda Management – taxi cabs and development rights.

Council Member Andre pointed out that taxi license was already on the list.

Mayor Mandel mentioned the addition of a meeting with the Estero Boulevard design team as soon as possible.

Town Attorney Miller noted that the ILA was on today's Work Session Agenda.

Mayor Mandel asked Mr. Phelan if the design team would be able to meet on August 19<sup>th</sup>.

Mr. Phelan stated he would verify the date with the County staff and consultants.

Town Manager Stewart indicated the next budget discussion was scheduled for September 3<sup>rd</sup>.

Town Clerk Mayher stated there was a Joint Work Session with the Audit Committee on September 3<sup>rd</sup> in the morning.

Council Member Raymond asked if the Council would receive the proposed budget prior to the September 3<sup>rd</sup> meeting, and if the items that were requested to be changed were changed.

Town Manager Stewart responded in the affirmative.

Discussion ensued regarding Work Session items and meeting dates.

Mayor Mandel requested the Town Manager and Town Clerk schedule a separate Work Session on the budget prior to September 3<sup>rd</sup>. He clarified that the meeting with the County design team and consultant was tentatively scheduled for August 19<sup>th</sup>; and the Town Manager and Town Clerk would schedule a separate Work Session for the budget.

Discussion was held concerning Development Rights as a Work Session item and scheduling the matter.

Consensus approved adding Development Rights to the September 3, 2013 Work Session.

## **XIX. RECAP OF ACTION ITEMS**

Town Manager Stewart recapped the Action Items added during the meeting:

- Council approved the Public Safety Committee banners with the 'Yield To' side facing the entrances of the Town.
- Council approved and staff would process the CDBG Agreement accordingly.
- Council approved and staff would process the Bivalve Data Collection Grant from the Charlotte Harbor National Estuary Program.
- Council adopted Ordinance 13-05, Non-Residential Mandatory Recycling, with an effective date of 11/1/13; and staff would inform the businesses of the ordinance.
- Town Manager would prepare a letter to the Lee County Manager regarding development rights as approved by Council for Crescent Beach Family Park.
- Estero Boulevard meeting with County staff was tentatively scheduled for August 19<sup>th</sup>.
- Town Attorney would draft a resolution regarding the Biggert-Waters National Flood Insurance Reform Act of 2012 which would be forwarded to elected officials as requested by Council; and Mayor Mandel would bring the matter to the attention of the Florida League of Cities.
- Community Development Director Fluegel and Planning Coordinator Overmyer would attend the meeting regarding the proposed Walmart site.
- Staff would investigate the 'discount prescription cards' as noted by the National League of Cities.
- Staff would prepare a proclamation for the Spirit of '45.

Council Member List reminded the Town Manager about installing 'no parking, standing, delivery, etc.' signs on Primo Drive as it related to the Beached Whale.

Town Manager Stewart added that the Town Attorney would prepare a legal analysis of the annexation of Mound Key.

## **XX. ADJOURNMENT**

Motion by Council Member List; second by Council Member Andre. Meeting adjourned at 11:36 a.m.

Adopted \_\_\_\_\_ With/Without changes. Motion by \_\_\_\_\_

Vote: \_\_\_\_\_

\_\_\_\_\_  
Michelle D. Mayher, Town Clerk

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